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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,708	05/03/2005	Michael Birsha Davies	P33143USW	6207

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GLAXOSMITHKLINE

CORPORATE INTELLECTUAL PROPERTY, MAI B482

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EXAMINER

OSTRUP, CLINTON T

ART UNIT

PAPER NUMBER

3771

NOTIFICATION DATE

DELIVERY MODE

11/26/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/533,708

Applicant(s)

DAVIES ET AL.

Examiner

CLINTON OSTRUP

Art Unit

3771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 November 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-10, 12, 14-33 and 36-39.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771

/Clinton Ostrup/
Examiner, Art Unit 3771

Continuation of 11, does NOT place the application in condition for allowance because: Applicants arguments are not found convincing. Therefore, the prior art of record continues to read on the rejected claims. Applicant argues that Dmitrovic does not disclose, teach, or suggest a container having a first part configured to be pivotal to a first angular position disposed behind a second part and the first part and the second part configured to nest together in a nesting state when the first part is in the first angular position as Dmitrovic does not teach rotating the dust cover 180 degrees and positioning it behind a second part after rotation. First, it should be remembered that there is no positive claimed recitation that the first part and the second part nest together. The claim requires that "the first part and the second part configured to nest together in a nesting state." The device disclosed by Dmitrovic has a dust cover that can be rotated 180 degrees and then flipped upward toward the body. Thus, it is clear that the device disclosed by Dmitrovic meets the claimed limitations. Regarding applicant's assertion that Figures 1-8 teach away from such nesting, the examiner respectfully disagrees. The claimed nesting state does not require a second part to be completely encapsulated or enclosed by the first part. Thus, the flipping of the dust cover would provide a portion of the second part to be nested with the first part (dust cover). Regarding applicant's argument that Howlett does not disclose, teach or suggest that a first part and a second part of a container are configured to nest together in a nesting state when the first part of a container is in the first angular position, applicant is reminded that Howlett was used to provide a specific hinge, as claimed in claims 21, 24-27 and 30-33 as Dmitrovic teaches a container that is configured to be placed in a nesting state. Regarding applicant's argument that Rand does not overcome the shortcomings of Howlett and Dmitrovic, applicant is reminded that Rand was used to teach the obviousness of Providing a reading feature and dose counter on a container, as claimed in claims 14-15, 17, 18 and 29.